

FILED 05 MAY 2014 13:00 PM ORE

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

MICHAEL HUDGINS,	)	
	)	
Plaintiff,	)	Civil No. 02-6040-TC
	)	
v.	)	VERDICT
	)	
CITY OF ALBANY, PAT MERINA, DON	)	
O'MALLEY, PHIL McLAIN, and	)	
JOE SIMON,	)	
	)	
Defendants.	)	
	)	

**VERDICT ONE: FIRST AMENDMENT CLAIM**

**1A. Has Plaintiff proved that the exercise of his free speech rights was a substantial or motivating factor in the denial of promotion?**

YES   X   NO \_\_\_\_\_

If your answer to question 1A is "NO," please go to question 1C below.

If your answer to question 1A is "YES," please determine which Defendants are liable in 1B.

**1B.** The following Defendants are liable for the denial of promotion:

Defendant McLain	YES _____	NO _____
Defendant Merina	YES _____	NO _____
Defendant O'Malley	YES <input checked="" type="checkbox"/>	NO _____
Defendant City of Albany	YES <input checked="" type="checkbox"/>	NO _____

**1C.** Has Plaintiff proved that the exercise of his free speech rights was a substantial or motivating factor in his transfer from Detectives to Patrol?

YES  NO \_\_\_\_\_

If your answer to question 1C is ‘NO,’ please go to question 1E below.

If your answer to question 1C is “YES,” please determine which Defendants are liable in 1D.

**1D.** The following Defendants are liable for Plaintiff’s transfer out of Detectives and into Patrol:

Defendant McLain	YES <input checked="" type="checkbox"/>	NO _____
Defendant Merina	YES _____	NO _____
Defendant O'Malley	YES <input checked="" type="checkbox"/>	NO _____
Defendant City of Albany	YES <input checked="" type="checkbox"/>	NO _____

**1E.** Has Plaintiff proved that the exercise of his free speech rights was a substantial or motivating factor in his referral for criminal prosecution?

YES  NO \_\_\_\_\_

If your answer to question 1E is “NO,” please go to question 1G below.

If your answer to question 1E is “YES,” please determine which Defendants are liable in 1F.

**1F.** The following Defendants are liable for Plaintiff’s referral for criminal prosecution:

Defendant McLain	YES <input checked="" type="checkbox"/>	NO _____
Defendant O'Malley	YES <input checked="" type="checkbox"/>	NO _____
Defendant City of Albany	YES <input checked="" type="checkbox"/>	NO _____

**1G.** Has Plaintiff proved that the exercise of his free speech rights was a substantial or motivating factor in his 30 day suspension without pay?

YES  NO 

If your answer to question 1G is "NO," please go to 1I below.

If your answer to question 1G is "YES," please determine which Defendants are liable in 1H.

**1H.** The following Defendants are liable for Plaintiff's suspension:

Defendant McLain	YES _____	NO _____
Defendant O'Malley	YES _____	NO _____
Defendant Simon	YES _____	NO _____
Defendant City of Albany	YES _____	NO _____

**1I.** Has Plaintiff proved that the exercise of his free speech rights was a substantial or motivating factor in any other action or actions that either alone or taken together was an adverse employment action?

YES  NO \_\_\_\_\_

If your answer to question 1I is "NO," please go to question VERDICT TWO below.

If your answer to question 1I is "YES," please determine which Defendants are liable in 1J.

**1J.** The following Defendants are liable for adverse employment actions:

Defendant McLain	YES <u></u>	NO _____
Defendant Merina	YES _____	NO _____
Defendant O'Malley	YES <u></u>	NO _____
Defendant Simon	YES _____	NO _____
Defendant City of Albany	YES <u></u>	NO _____

**VERDICT TWO: CLAIMS UNDER TITLE VII and ORS 659A.030: RETALIATION FOR REPORTING DISCRIMINATION**

On Plaintiff's claim that he was retaliated against for complaining about unlawful discrimination, we find in favor of (**check one**):

For Plaintiff Michael Hudgins  OR For Defendant City of Albany and against Plaintiff Michael Hudgins \_\_\_\_\_

**VERDICT THREE: RETALIATION BY A PUBLIC ENTITY FOR  
WHISTLEBLOWING IN VIOLATION OF ORS 659A.203**

On Plaintiff's claim that Defendant City violated the whistleblowing laws we find in favor of (check one):

For Plaintiff Michael Hudgins \_\_\_\_\_  OR For Defendant City of Albany  
and against Defendant City \_\_\_\_\_ and against Plaintiff Michael Hudgins \_\_\_\_\_

**VERDICT FOUR: CLAIM FOR RETALIATION FOR REPORTING CRIMINAL  
ACTIVITY IN VIOLATION OF ORS 659A.230**

On Plaintiff's claim that Defendant City violated the law protecting the reporting of criminal activity we find in favor of (check one):

For Plaintiff Michael Hudgins \_\_\_\_\_  OR For Defendant City of Albany  
and against Defendant City \_\_\_\_\_ and against Plaintiff Michael Hudgins \_\_\_\_\_

**VERDICT FIVE: CLAIM FOR INTENTIONAL INFILCTION OF EMOTIONAL  
DISTRESS**

On Plaintiff's claim that Defendant City intentionally inflicted emotional distress, we find in favor of (check one):

For Plaintiff Michael Hudgins \_\_\_\_\_  OR For Defendant City of Albany  
and against Defendant City \_\_\_\_\_ and against Plaintiff Michael Hudgins \_\_\_\_\_

If you found for Plaintiff on one or more claims above, please consider verdict SIX. If you find in favor of Defendants on all claims in Verdicts ONE, TWO, THREE, FOUR, and FIVE, please skip verdict SIX and have your foreperson sign and date the verdict form below.

**VERDICT SIX: DAMAGES**

You must now determine Plaintiff's damages on any verdict you returned in his favor. Each claim for relief allows for recovery of only certain types of damages. Therefore, do not be concerned that the damages available under each claim are not the same. Award the total amount of damages for each claim without regard to duplication, then follow the instruction and indicate what amount of that award, if any, is also awarded on another claim. The Court will then take action to assure that the duplicated amount is not awarded more than once.

**6A. Free Speech**

**6A1.** On Plaintiff's Free Speech claims, VERDICT ONE, we find Plaintiff's economic damages to be (if none, write "NONE"):

Do not be concerned that awarding past and future wage loss and detective differential would result in a double recovery or are mutually exclusive. Award all damages you find plaintiff has proven. The court will assure that there is no double recovery. Apply this rule throughout your consideration of plaintiff's damages.

Past and future wage and benefit loss:	\$ <u>280,000.00</u>
Criminal defense costs:	\$ <u>4,000.00</u>
Detective differential:	\$ <u>1200.00</u>
Past and future medical expenses:	\$ <u>20,000.00</u>
TOTAL ECONOMIC DAMAGES	\$ <u>318,000.00</u> (SD)

**6A2.** On Plaintiff's Free Speech claims, VERDICT ONE, we find the Plaintiff's total non-economic damages to be (if none, write "NONE"):

\$100,000.00

**6A3.** On Plaintiff's Free Speech claims, we award punitive damages in the following amounts against the following Defendants (if none, write "NONE"):

Defendant McLain	\$ <u>32,000.00</u>
Defendant Merina	\$ <u>NONE</u>
Defendant O'Malley	\$ <u>85,000.00</u>
Defendant Simon	\$ <u>NONE</u>

**6B. Retaliation: Discrimination**

**6B1.** On Plaintiff's Retaliation: Discrimination claim, VERDICT TWO, we find Plaintiff's economic damages to be (if none, write "NONE"):

Past and future wage and benefit loss:	\$ <u>280,000.00</u>
Criminal defense costs:	\$ <u>6,000.00</u>
Detective differential:	\$ <u>12,000.00</u>
Past and future medical expenses:	\$ <u>20,000.00</u>
TOTAL ECONOMIC DAMAGES	\$ <u>307,200.00</u>

To avoid duplication, what amount, if any, of these damages were also awarded in 6A1? (If none, write "NONE")

\$ 308,000.00 (SVD)

**6B2.** On Plaintiff's Retaliation: Discrimination claim, VERDICT TWO, we find the Plaintiff's total non-economic damages to be (if none, write "NONE"):

\$ 1,000,000.00

To avoid duplication, what amount, if any, of these damages were also awarded in 6A2? (If none, write "NONE")

\$ 1,000,000.00

**6C. Whistleblowing – Public Entity**

**6C1.** On Plaintiff's Whistleblowing: Public Entity claim, VERDICT THREE, we find Plaintiff's economic damages to be (if none, write "NONE"):

Past and future wage and benefit loss:	\$ <u>280,000.00</u>
Criminal defense costs:	\$ <u>6,000.00</u>
Detective differential:	\$ <u>12,000.00</u>
Past and future medical expenses:	\$ <u>20,000.00</u>
TOTAL ECONOMIC DAMAGES	\$ <u>307,200.00</u>

To avoid duplication, what amount, if any, of these damages were also awarded in 6A1 and/or 6B1? (If none, write "NONE")

\$ 307,200.00 (SVD)

**6C2.** On Plaintiff's Whistleblowing: Public Entity claim, VERDICT THREE, we find the Plaintiff's total non-economic damages to be (if none, write "NONE"):

\$ 1000,000.00

To avoid duplication, what amount, if any, of these damages were also awarded in 6A2 and/or 6B2? (If none, write "NONE")

\$ 1,000,000.00

**6D. Whistleblowing – Reporting Criminal Activity**

**6D1.** On Plaintiff's Whistleblowing: Reporting Criminal Activity claim, VERDICT FOUR, we find Plaintiff's economic damages to be (if none, write "NONE")

Past and future wage and benefit loss:	\$ <u>280,000.00</u>
Criminal defense costs:	\$ <u>6,000.00</u>
Detective differential:	\$ <u>17,000.00</u>
Past and future medical expenses:	\$ <u>20,000.00</u>
TOTAL ECONOMIC DAMAGES	\$ <u>307,200.00</u>

To avoid duplication, what amount, if any, of these damages were also awarded in 6A1, 6B1 and/or 6C1? (If none, write "NONE")

\$ 308,000.00 (SD)

**6D2.** On Plaintiff's Whistleblowing: Reporting Criminal Activity claim, VERDICT FOUR, we find the Plaintiff's total non-economic damages to be (if none, write "NONE"):

\$ 1,000,000.00

To avoid duplication, what amount, if any, of these damages were also awarded in 6A2, 6B2 and/or 6C2? (If none, write "NONE")

\$ 1,000,000.00

**6E. Intentional Infliction of Emotional Distress**

**6E1.** On Plaintiff's Intentional Infliction of Emotional Distress claim, VERDICT FIVE, we find Plaintiff's economic damages to be (if none, write "NONE")

Past and future wage and benefit loss:	\$ <u>280,000.00</u>
Criminal defense costs:	\$ <u>6,000.00</u>
Detective differential:	\$ <u>12,000.00</u>
Past and future medical expenses:	\$ <u>20,000.00</u>
TOTAL ECONOMIC DAMAGES	\$ <u>307,000.00</u>

To avoid duplication, what amount, if any, of these damages were also awarded in 6A1, 6B1, 6C1 and/or 6D1? (If none, write "NONE")

\$ 348,000.00 

**6E2.** On Plaintiff's Intentional Infliction of Emotional Distress claim, VERDICT FIVE, we find the Plaintiff's total non-economic damages to be (if none, write "NONE"):

\$ 1,000,000.00

To avoid duplication, what amount, if any, of these damages were also awarded in 6A2, 6B2, 6C2 and/or 6D2? (If none, write "NONE"):

\$ 1,000,000.00

Once you have completed this question, have your foreperson sign and date this form.

DATED: May 20 2005

FOREPERSON: Steve H. H.